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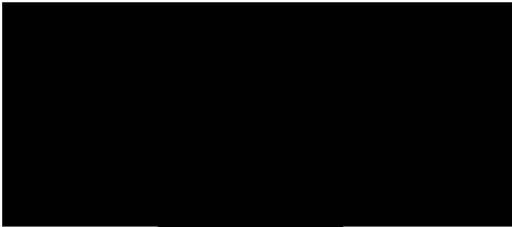
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



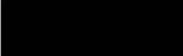
U.S. Citizenship
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FILE:



Office: KINGSTON, JAMAICA

Date: JUN 12 2009

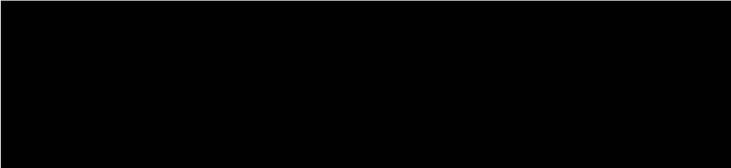
IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Kingston, Jamaica, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Jamaica, entered the United States without inspection in April 2001. He did not depart until November 2005. The applicant was thus found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to be able to return to the United States to reside with his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 1, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated June 27, 2007 and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant’s U.S. citizen spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant’s U.S. citizen spouse.

The applicant’s U.S. citizen spouse asserts that she will suffer extreme emotional, financial and physical hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. In a declaration she states that she would suffer extreme emotional hardship due to the long and close relationship she has with the applicant. In addition, she notes that she is suffering financial hardship as she had become accustomed to the applicant’s financial contributions but due to his absence from the United States, she is behind on her monthly bills and the bank may foreclose on her house. Finally, the applicant’s spouse states that she is experiencing physical hardship as she suffers from arthritis in her hands and has thus lost “a lot of my ability to work. I can’t pick things up as easily as I used to. [redacted] [the applicant] knew that and that’s why he did all of my chores for me. Now I have no one to help me. Some chores I can do with pain. Others I just don’t do....” *Affidavit of [redacted]* dated June 21, 2007.

With respect to the applicant’s spouse’s referenced emotional hardship, an evaluation has been provided by [redacted] Dr. [redacted] concludes that the applicant’s spouse is suffering Major Depressive Disorder due to her husband’s absence. *Report from [redacted] LCSW, CPFT, PsyD, JD*, dated May 31, 2007. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview

between the applicant's spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse, nor a specific short and long-term treatment plan for the depressive disorder referenced by [REDACTED] to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

Regarding the financial hardship referenced by the applicant's spouse, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."). Although copies of past due bills have been provided to evidence financial hardship, the record fails to establish the applicant's spouse's current financial situation, including a detailed list of income and expenses, assets and liabilities, and what specific contributions the applicant made to the household prior to his departure from the United States, to establish that his physical absence is causing extreme financial hardship to her spouse. Moreover, the record establishes that the applicant has an extensive family network, including two adult children, numerous siblings and nieces and nephews; it has not been established that they are unable to assist her financially should the need arise. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby assisting the applicant's spouse financially should the need arise.

Finally, with respect to the physical hardship referenced by the applicant's spouse, no letter from the applicant's spouse's treating physician has been provided on appeal, detailing her medical condition, the gravity of the situation, the short and long-term treatment plan, and what specific hardships she will face if the applicant is not physically present in the United States. Moreover, as noted above, the applicant's spouse has an extensive support network, including a sibling that resides with her. It has not been established that her family is unable to assist her should the need arise. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden

of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that although the applicant's spouse may need to make alternate arrangements with respect to her own emotional, financial and physical care and the maintenance of the household since the applicant is unable to reside in the United States, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The applicant's spouse asserts that she will suffer financial hardship due to the low salaries in Jamaica and the possibility that she will not be employable due to her age. *Supra* at 4. As previously noted, assertions without support documentation do not suffice to establish extreme hardship.

Counsel further notes that the applicant's spouse will suffer hardship as she has extensive family ties and a long-term employment relationship in the United States that she does not want to leave. Counsel also references that the applicant's spouse has no ties to Jamaica and will suffer as being forced to live in Jamaica would compromise her medical and mental health care and cut the length of her life significantly. *Supra* at 3-5. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It has thus not been established that the applicant's spouse, a native of Jamaica, would suffer extreme hardship were she to relocate abroad to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.